

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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JACOB LOFARO, PPA NICOLE))	
LOFARO,))	
))	
Plaintiffs,))	
))	
V.))	Civil Action No. 04-11297-MLW
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DEBORAH BRADLEY, LOUIS LAZ,))	
and ASSOCIATES IN OBSTETRICS))	
& GYNECOLOGY,))	Formerly: Essex County
))	Superior Court
Defendants.))	Civil Action No.
<hr/>))	03-536

**MEMORANDUM IN SUPPORT OF MOTION TO SUBSTITUTE
THE UNITED STATES AS PROPER PARTY DEFENDANT FOR LOUIS LAZ, M.D.**

The United States of America, on behalf of the defendant, Louis Laz, M.D., by and through its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, pursuant to 28 U.S.C. § 2679(d), hereby respectfully requests that he be dismissed as a named defendant in this matter and that this action be deemed an action against the United States. In support of this motion, the defendant states the following:

1. The complaint alleges that on or about April 10, 1998, Dr. Laz failed to adequately and properly diagnose and treat Jacob Lofaro during his delivery. As a result of said negligence, the plaintiff alleges "severe and permanent personal injuries to Jacob."

2. During the period of time alleged in the complaint, Dr.

Laz was an employee of the Lynn Community Health Center in Lynn, Massachusetts (hereinafter "LCH").

3. The Federally Supported Health Care Centers Assistance Act of 1992 (Pub.L. 102-501) (hereinafter "FSHCAA") provides coverage to federally supported health centers and their employees for acts or omissions that occurred on or after January 1, 1993, or when the health center is deemed eligible for coverage, whichever is later. 42 U.S.C. § 233(a). Thus, all actions for negligence of employees of health centers covered under the act must be brought pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b) and 2671, et seq.

4. The Secretary of Health and Human Services has deemed LCH eligible for FTCA coverage pursuant to the Federally Supported Health Centers Assistance Act of 1992, 42 U.S.C. § 233(g)-(n) on March 15, 1994, and renewed its deemed status effective June 23, 1996. (Copies of the deeming letters, dated March 15, 1994, and June 20, 1996, are attached as Exhibit A.)

5. The Attorney General, by the United States Attorney for the District of Massachusetts, has certified, pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d), that Dr. Louis Laz was acting within the scope of his employment with LCH at the time of the incident alleged in the complaint, and that pursuant to 42 U.S.C. § 233(g) Dr. Louis Laz is deemed to be an employee of the United States for FTCA purposes. (Copy of Certification of Scope

of Employment is attached as Exhibit B.)

6. As such, any claim for negligence falls within the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b) and 2671, et seq., and the exclusive remedy for the plaintiff in this case is against the United States of America. 28 U.S.C. § 2679. Therefore, the only proper party defendant is the United States.

Wherefore, the defendant Louis Laz, M.D. respectfully requests that this Court dismiss Louis Laz, M.D. as a defendant and substitute the United States of America as the proper party defendant in this case.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

Dated: June 14, 2004

/S/ Christopher R. Donato
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CERTIFICATE OF SERVICE

I hereby certify that on this day service of the foregoing Motion to Substitute the United States as the Proper Party Defendant for Louis Laz, M.D. has been made upon the following by depositing a copy in the United States mail, postage prepaid to:

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Dated: June 14, 2004

/S/ Christopher R. Donato
Christopher R. Donato
Assistant U.S. Attorney